

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOHN GRANGER,

Plaintiff,

- against -

GILL ABSTRACT CORPORATION and NAN
GILL,

Defendants.

Civ. Action No. 07-CV-3491(PKC)

AFFIDAVIT OF DREW DISKIN

STATE OF NEW YORK)
)ss.:
COUNTY OF NEW YORK)

Drew Diskin, being duly sworn, deposes and says:

1. I am the managing member of Inertia, LLC (“Inertia”), located at 619 Charles Court, River Dale, N.J. 07675 and was Defendant Gill Abstract Corporation’s website administrator from 2005 through to March 2006. Accordingly, I have personal knowledge of the facts set forth herein. I respectfully submit this affidavit in opposition to Plaintiff John Granger’s (“Plaintiff” or “Granger”) motion for summary judgment and in support of Defendant Nan Gill (“Gill”) and Gill Abstract Corp.’s (“Abstract”) (collectively “Defendants”) cross motion for summary judgment.

2. In short, it is undisputable that Plaintiff’s title insurance rate calculator (the “Rate Calculator”) was removed from Abstract’s website several months before June 30, 2006 registration was granted. Accordingly, Plaintiff’s claims are all without merit, and

Plaintiff's complaint must be stricken. At the very least, Plaintiff's damages if any must be limited to actual damages.

3. Inertia provides freelance administrative web services for the web, including Abstract's website.

4. Upon information and belief Abstract is a title company and is engaged in the business of providing a range of title services to the general public, including but not limited to, the sale of title and mortgage insurance. Abstract's website address is www.gillabstract.com (the "Website").

5. On or about February, 17 2006, I received a letter from Plaintiff dated February 13, 2006, claiming that the Rate Calculator on Abstract's website was copyrighted.

6. I immediately contacted Ms. Nan Gill of Gill Abstract received instructions to immediately remove the Rate Calculator from the Website. Accordingly, on or about February 21, 2006, I removed the Rate Calculator from the Website, a fact which I communicated by email to her. A copy of my email correspondence dated February 21, 2006 to Ms. Gill is attached hereto as Exhibit "A."

7. I was also advised by Ms. Gill and Mr. Sal Cimaglia ("Mr. Cimaglia") of SK Consulting, that Mr. Cimaglia would be providing a new title insurance and mortgage rate calculator for the Website.

8. On or about February 21, 2006, I placed the new title insurance and mortgage rate calculator link provided by Mr. Cimaglia on Abstract's website. I checked Abstract's website myself and confirmed that the Rate Calculator had been removed and that it had been replaced with a new rate calculator.

9. I promptly ensured that the Rate Calculator was removed from the Website on February 21, 2006 (See correspondence attached hereto as Exhibit "A") and was replaced by another mortgage rate and title insurance calculator and confirmed that this was done as instructed without any contractual obligation to do so. This fact is also confirmed by the records of the internet archive "The Wayback Machine."

10. The Wayback Machine located on the world wide web at <http://www.archive.org/index.php> is a trusted and respected service that allows people to visit archived versions of web sites. Visitors to the Wayback Machine can type in a URL, select a date range, and then begin surfing on an archived version of the Web. Accordingly, using the Wayback Machine it is easy to prove the content of the Website before and after February 21, 2006.

11. Attached hereto as Exhibit "B" is a printout from the Wayback Machine illustrating all changes to the Website. As the court can see, the Wayback Machine documented that Gill Abstract's website was updated on or about March 5, 2006.¹

12. Attached hereto as Exhibit "C" is the archived image of the Website as of March 5, 2006. When one clicks on the link to the rate calculator on this March 5, 2006 date, or any other date thereafter, the website user is referred to the title insurance rate calculator provided by Mr. Cigmalia – NOT JOHN GRANGER'S TITLE INSURANCE RATE CALCULATOR.

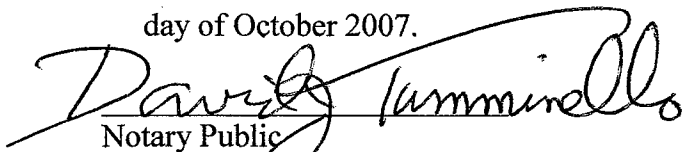
13. Moreover, as stated above, there was no material belonging to John Granger on the Website at any time after the June 30 Registration Date.

¹ Since the WayBack Machine website does not update daily, even though the Website was updated on February 21, 2006, this change was not recorded until March 5, 2006 – a date well before John Granger's June 30, 2006 registration date.

14. Accordingly, it is undisputable that the Rate Calculator was removed from Abstract's website on or about February 21, 2006, or at the very latest on March 5, 2006. This fact is confirmed independently by the Wayback Machine. Certainly the Rate Calculator was removed from the Website well before June 30, 2006 the date of registration of the Rate Calculator.

WHEREFORE, I respectfully request that the Court deny Plaintiff's motion for summary judgment with prejudice, and grant Defendants' cross motion for summary judgment and grant Defendants the fees and costs associated with the defense of the instant motion for summary judgment.

Sworn to before me on this 18TH
day of October 2007.


Notary Public

DAVID S. Tumminello
MY COMMISSION EXPIRES
MARCH 1, 2011



Drew Diskin

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From: nangill@gillabstract.com Add to Address Book Add Mobile Alert**To:** drew@drewdiskin.com**Subject:** Re: Fw: Web Calculator for Gill Abstract**Date:** Wed, 22 Feb 2006 02:53:41 -0500

Thank you

N

----- Original Message -----

From: <drew@drewdiskin.com>**To:** <nangill@gillabstract.com>**Sent:** Tuesday, February 21, 2006 9:50 PM**Subject:** Re: Fw: Web Calculator for Gill Abstract

>

> Updated.

>

> Drew

>

>

>

>> Drew

>> Please get this one up as quickly as possible and the other one off.

>> Thank you,

>> Nan

>> ----- Original Message -----

>> **From:** SKCC@aol.com>> **To:** nangill@gillabstract.com>> **Cc:** drew@drewdiskin.com>> **Sent:** Tuesday, February 21, 2006 1:25 PM>> **Subject:** Re: Web Calculator for Gill Abstract

>>

>>

>> Nan/Drew

>> The link for the web calculator is up and running. You can now connect

>> the URL which is

>> www accuratespda.gillabstract.swf to your website and it will work.

>> If any questions, call me at 914-760-0922

>> Tale care

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under 1.5 yrs!This message is not flagged. [[Flag Message](#) - [Mark as Unread](#)][Printable View](#)**From:** nangill@gillabstract.com [Add to Address Book](#) [Add Mobile Alert](#)**To:** SKCC@aol.com**CC:** drew@drewdiskin.com**Subject:** Re: Web Calculator for Gill Abstract**Date:** Mon, 20 Feb 2006 12:33:18 -0500

Thanks Sal,
Just let Drew know also so he can link it.
Nan

----- Original Message -----

From: SKCC@aol.com**To:** nangill@gillabstract.com**Cc:** drew@drewdiskin.com**Sent:** Monday, February 20, 2006 8:30 AM**Subject:** Re: Web Calculator for Gill Abstract

Nan

You will not be able to view what the calculator looks like till sometime tomorrow, Tuesday. I will email you when it is up, then you can look at it and let me know if you like it, then your programmer can link it immediately.

Thanks

Sal

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My thoughts are with you. I hope this ordeal is over quickly for you.
I will write the letter.
Nan

----- Original Message -----

From: Drew Diskin**To:** Nan Gill**Sent:** Sunday, February 19, 2006 8:05 PM**Subject:** Re: rates calculator

Nan,

Thanks for the e-mail. I received a cease-and-assist letter, too, in the mail. Needless to say, I was less than thrilled. I believe you may need to rethink some of your strategies for forms and such in this regard. In the meanwhile, I would suggest that you contact the person who sent the letter, apologize for not knowing it was proprietary, and let him know that you are rectifying the situation. This would help prevent them from blacklisting you with any associations or large industry groups. You never quite know who people know...

I am scheduled to close on my new home in VA this week. Once that is finished, and I am not living in a hotel (and commuting 600 miles every weekend) I will have more time to dedicate to your sites. Thank you for your understanding.

Respectfully,

Drew

Cheers.

Drew

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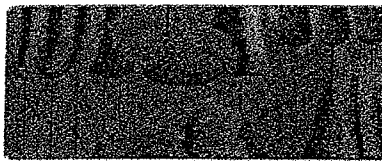
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could not see what it looked like.

Please get in touch with Drew Diskin to set it up.

By copy of this email, I am notifying him that you will be getting in touch with him.

Thanks,

Nan

----- Original Message -----

From: SKCC@aol.com**To:** nangill@gillabstract.com**Sent:** Sunday, February 19, 2006 2:05 PM**Subject:** Web Stuff

Hi Yan..... oops....Nan

Good seeing you Friday

My programmer did save the web calculator we did a while back for you. It will be back up next Tuesday for you to look at. If you go to www accuratespda.com/gillabstract.swf you can see what it looks like. If you want to switch over to it, just give the link above to your web programmer and tell him to place it under the rate calculator button on the website. It will work immediately. I have requested Florida rates from one source and if you happen to find your rates, email them to me. I am looking into incorporating the standard rates, but not mortgage tax and transfer tax. The charge for setting up the website if you want to go with it is \$799, then \$35 a month for all updates and upgrades including any palm and pc programs you may have. If and when we do the florida rates, there would be a minor charge for installation. I also will send you a monthly printout on how many hits the rate calculator is getting from your customers and how many different customers are hitting.....

Take care

Talk to you soon

Sal

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Note some duplicates are not shown. See all.
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Search Results for Jan 01, 1996 - Aug 08, 2007

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007
0 pages	0 pages	0 pages	0 pages	0 pages	7 pages	13 pages	23 pages	73 pages	26 pages	31 pages	8 pages
					Mar 02, 2001 *	Jan 20, 2002	Feb 12, 2003	Jan 13, 2004	Jan 17, 2005	Jan 01, 2006	Jan 02, 2007
					Mar 07, 2001	Jan 24, 2002	Mar 23, 2003 *	Apr 03, 2004 *	Jan 29, 2005	Jan 02, 2006	Jan 19, 2007
					Apr 01, 2001	Mar 30, 2002	Mar 28, 2003	Apr 04, 2004	Jan 29, 2005 *	Jan 02, 2006	Jan 24, 2007
					Apr 05, 2001	May 23, 2002	Apr 02, 2003	Apr 07, 2004	Feb 05, 2005 *	Jan 14, 2006	Jan 29, 2007
					Apr 14, 2001	May 26, 2002	Apr 11, 2003	May 14, 2004	Feb 06, 2005 *	Jan 15, 2006	Feb 05, 2007
					Sep 25, 2001	Aug 03, 2002	Jun 03, 2003	May 26, 2004	Feb 11, 2005 *	Jan 16, 2006	Feb 23, 2007 *
					Nov 27, 2001	Aug 04, 2002 *	Jun 09, 2003	Jun 04, 2004	Mar 05, 2005	Jan 17, 2006	Apr 03, 2007 *
						Sep 24, 2002	Jun 21, 2003	Jun 07, 2004	Mar 06, 2005	Jan 18, 2006	Apr 10, 2007
						Sep 27, 2002	Jun 24, 2003 *	Jun 09, 2004	Mar 15, 2005	Jan 27, 2006 *	
						Sep 29, 2002	Jul 18, 2003	Jun 11, 2004	Mar 18, 2005	Feb 01, 2006	
						Oct 16, 2002 *	Jul 28, 2003	Jun 12, 2004	Mar 24, 2005 *	Feb 02, 2006	
						Nov 27, 2002	Aug 06, 2003	Jun 27, 2004	Apr 03, 2005 *	Feb 08, 2006	
							Aug 12, 2003	Jun 29, 2004	Apr 04, 2005 *	Feb 21, 2006	
							Sep 23, 2003 *	Jul 01, 2004	Jun 04, 2005	Mar 05, 2006 *	
							Sep 29, 2003	Jul 03, 2004	Jun 05, 2005	Apr 18, 2006	
							Oct 01, 2003 *	Jul 04, 2004	Aug 25, 2005	May 15, 2006 *	
							Oct 12, 2003 *	Jul 07, 2004	Aug 27, 2005	May 16, 2006	
							Oct 19, 2003	Jul 10, 2004	Sep 01, 2005 *	Jun 10, 2006 *	
							Nov 26, 2003	Jul 13, 2004	Oct 25, 2005 *	Jun 12, 2006	
							Nov 27, 2003	Jul 14, 2004	Oct 27, 2005	Jun 18, 2006 *	
							Dec 02, 2003	Jul 15, 2004	Nov 08, 2005 *	Jul 16, 2006 *	
							Dec 16, 2003	Jul 16, 2004	Dec 01, 2005	Jul 17, 2006	
							Dec 18, 2003	Jul 17, 2004	Dec 24, 2005	Jul 20, 2006	
								Jul 18, 2004	Dec 29, 2005	Aug 13, 2006	
								Jul 19, 2004	Dec 30, 2005	Aug 14, 2006	
								Jul 20, 2004	Dec 31, 2005	Aug 20, 2006	
								Jul 21, 2004		Sep 01, 2006	
								Jul 22, 2004		Sep 03, 2006	
								Jul 23, 2004		Oct 14, 2006	
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								Jul 25, 2004		Dec 05, 2006 *	
								Jul 26, 2004			
								Jul 27, 2004			
								Aug 04, 2004			
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								Aug 06, 2004			
								Aug 08, 2004			
								Aug 09, 2004			
								Aug 10, 2004			
								Aug 11, 2004			

*Crawl notes UPDATE from 2/21/06

Crawl date*: March 5, 2006

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We have been in the abstract and title insurance business for over 20 years and have established solid relationships with other companies in the industry. Our service does not stop when the premium is paid. We follow up on post-closing items with the utmost care and produce proofs in a timely manner when your client chooses either to resell or to refinance. The speed, accuracy and completeness of our search is our highest priority.

Our expertise in title insurance, banking and real estate law uniquely qualifies us to offer our underwriters the most efficient and knowledgeable services. Providing services from our offices in Manhattan, Goshen and Northport, we are dedicated to offering the best title insurance services throughout the greater New York State area, and now in Florida with our new offices in Clearwater.

We offer a full range of TITLE INSURANCE PRODUCTS:

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- Mortgage (lender) insurance
- Leasehold insurance
- Co-op insurance

In addition to title insurance products, we offer a wide variety of services designed and coordinated to assist the Real Estate Community.

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